



**MCI Telecommunications
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August 4, 1997

EX PARTE ON 11/1/97

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Re: Amendment of the Commission's Rules to Establish
Competitive Service Safeguards for Local
Exchange Carrier Provision of Commercial Mobile Radio
Services, WT Docket No. 96-162

Dear Mr. Caton:

On March 18, 1997, MCI Telecommunications Corporation filed its Further Comments in CC Docket No. 96-115. A portion of those comments is also relevant to the above-captioned proceeding. That portion of MCI's Further Comments in CC Docket No. 96-115 is enclosed herewith.

An original and one copy of this letter and attachment are being submitted for inclusion in the public record of this proceeding.

Yours truly,

Frank W. Krogh
Frank W. Krogh

cc: Jane Hinkley Halprin

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11. Please comment on any other issues relating to the interplay between sections 222 and 272.

One other issue that touches on the relationship between Sections 222 and 272 is the effect of Section 222 on Section 22.903(f) of the Commission's Rules, governing the provision of "customer proprietary information" by a BOC to its cellular subsidiary. As mentioned above, MCI explained in its comments that, given the competitive and privacy goals of Section 222, cellular and other CMRS should be treated as a "floating" service category for purposes of applying Section 222. In other words, in the case of an IXC, CMRS would be considered to be in the same category as its interLATA service, and CPNI derived from either category of service could be used to market the other without customer approval. Similarly, in the case of a BOC, CMRS would be considered to be in the same category as its local service, and CPNI derived from either of those categories could be used by the BOC or its affiliate to market the other without customer approval. Thus, a BOC is not precluded by Section 222 from using its local service CPNI to market its affiliate's cellular services in the absence of customer approval.

Construed in this manner, Section 222 is not inconsistent with Section 22.903(f) of the Commission's Rules. A BOC may provide CPNI to its cellular subsidiary for marketing purposes without customer approval, but that does not logically preclude application of the nondiscrimination requirements of Section 22.903(f). Any such CPNI used by the BOC's subsidiary must be made publicly available on the same terms and conditions. As mentioned above, Section 601(c)(1) states that the provisions of the 1996 Act do not impliedly supersede or modify any existing "Federal" law. "Federal law" in that context includes pre-existing Commission regulations.²³ Section 222 does not preclude disclosure of CPNI to others under these circumstances, since, under Section 222(c)(1), such disclosure is "required by law" -- namely Section 22.903(f) of the Rules. Thus, there is no basis to assume that Section 22.903(f) of the Rules is displaced or modified in any way by Section 222 of the Act.

The consistency of Section 22.903(f) of the Rules with the provisions of the 1996 Act is reinforced by the nondiscrimination requirements of Section 272(c)(1). Section 22.903(f) of the Rules dovetails closely with Section 272(c)(1), since both require BOCs to apply the same procedures relating to CPNI with regard to their affiliates and to all others. Thus, BOCs and other Tier 1 LECs should make CPNI and other information they share with their cellular affiliates available to all others at

²³ Report and Order, Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, FCC 96-288 (released July 1, 1996) at ¶ 29.

reasonable rates, terms and conditions, including reasonably frequent updates and through flexible information transfer interfaces meeting industry standards.

Moreover, if the Commission decides in WT Docket No. 96-162 to eliminate the structural separation requirement, all of the nonstructural safeguards of Section 22.903 should continue to apply to all BOCs and Tier 1 LECs. That includes the CPNI nondiscrimination requirements of Section 22.903(f). Thus, any CPNI used by a BOC in connection with its cellular service would have to be made publicly available.